

**MINUTES
of the
FIRST MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**July 24, 2014
Room AD101/102, Northern New Mexico College (NNMC)
Joseph Montoya Building
Española**

The first meeting of the Behavioral Health Subcommittee of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative Elizabeth "Liz" Thomson, chair, on July 24, 2014 at 9:15 a.m. in the Joseph Montoya Building at NNMC in Española.

Present

Rep. Elizabeth "Liz" Thomson, Chair
Sen. Benny Shendo, Jr., Vice Chair
Sen. Craig W. Brandt
Rep. Sandra D. Jeff
Sen. Howie C. Morales
Sen. Bill B. O'Neill
Sen. Gerald Ortiz y Pino
Sen. Mary Kay Papen
Rep. Edward C. Sandoval

Absent

Sen. Sue Wilson Beffort
Rep. Paul A. Pacheco
Sen. Sander Rue

Guest Legislators

Sen. Linda M. Lopez
Sen. Michael Padilla
Rep. Debbie A. Rodella

Staff

Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
Rebecca Griego, Records Officer, LCS
John Mitchell, Law School Intern, LCS
Nancy Ellis, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file, including those from public comment.

Thursday, July 24

Welcome and Introductions

The chair welcomed subcommittee members, staff and guests and introduced Dennis Tim Salazar, mayor pro tem of the Española City Council. Mr. Salazar welcomed members to Española and apologized that Mayor Alice A. Lucero was unable to attend today. Mr. Salazar said drug and alcohol abuse is a major problem in Rio Arriba County and Española, but with the collaboration of federal and local agencies and treatment specialists, early intervention and after-school activities are being encouraged to promote healthy children. Mr. Salazar stated that he previously worked for Easter Seals El Mirador (ESEM), one of the 15 behavioral health agencies whose Medicaid funding was suspended last year by the Human Services Department (HSD), and that there had been significant negative consequences for children, families and employees in the transition to new agencies. He asked subcommittee members to help in any way possible.

The chair then introduced the president of NNMC, Nancy "Rusty" Barcelo, Ph.D., who described many changes to the college, including graduate degree partnerships with New Mexico State University and soon with New Mexico Highlands University. In 2005, NNMC became a four-year institution, including its sister campus in El Rito. NNMC works with regional high schools in Penasco, Dulce, Chama and Jemez to offer courses with dual credit. She urged legislative support for a residence hall, as some students are being lost to southern Colorado schools that offer residence halls.

Dr. Barcelo introduced Pedro Martinez, Ph.D., vice president for academic affairs at NNMC, who stated that he believes higher education has a responsibility to align its programs with work force development. Dr. Martinez described programs at NNMC that focus on health management and geriatric nursing, and he described plans to create a mobile unit that could go into rural areas and provide basic medical care for seniors.

Report from the State Auditor

State Auditor Hector H. Balderas provided subcommittee members with a letter (see handout) detailing issues identified in the HSD 2013 financial audit that was publicly released by his office on February 27, 2014 (the full audit report can be found at www.osanm.org). As state auditor, it is his duty under state law to provide New Mexicans with an independent opinion of all government agencies' financial affairs, increase transparency, promote accountability and eliminate financial fraud, waste and abuse. His appearance before this subcommittee was at the written request of the chair and vice chair.

The results of the 2013 HSD audit, conducted in collaboration with the independent firm of CliftonLarsenAllen (CLA), which had been selected by the HSD, demonstrate a greater need for state and federal oversight of critical department functions in the expenditure of \$2.6 billion in federal Medicaid funds, Mr. Balderas said.

The audit process involved review of a report produced by Public Consulting Group, Inc. (PCG), which was hired by the HSD, that identified an estimated \$36 million in overbilling that formed the basis of the HSD's June 2013 referrals to the New Mexico attorney general and suspension of payments to 15 behavioral health service providers for "credible allegations of fraud" (CAFs). The audit process was made significantly more time-consuming and challenging by the HSD's refusal to provide the PCG report until ordered to do so by a district court judge, according to Mr. Balderas. His staff later accidentally discovered that the copy eventually provided by the HSD to his office had been redacted, with language removed that had stated "PCG's Case File Audit did not uncover what it would consider to be credible allegations of fraud, nor significant concerns related to consumer safety". Further legal action by the Office of the State Auditor was required to compel the HSD to deliver an unaltered copy of the report, as ordered by the court. The HSD explained that it had directed PCG to remove the passage because only the HSD may make a determination regarding what constitutes a CAF. Mr. Balderas said he remains troubled by the HSD's alteration of the state record that was the basis for a referral to law enforcement authorities.

Mr. Balderas reviewed significant findings of the 2013 HSD audit, including a lack of internal controls by the HSD designed to effectively and timely identify overpayments to providers; a significant deficiency regarding the HSD procedures for investigating CAFs; improperly paid costs to PCG using Medicaid funds; and improper payments totaling \$620,383 to five Arizona behavioral health service providers hired by the HSD to replace the 15 suspended New Mexico providers. These audit findings were formally referred to the New Mexico attorney general to assist in ongoing criminal investigations and to the Centers for Medicare and Medicaid Services (CMS) and the Office of Audit Services within the Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services, Mr. Balderas said. In early March, the CMS informed his office that because of the ongoing criminal investigations, it declined to review the HSD's determinations related to CAFs, he said. The OIG acknowledged "areas of joint concern", and Mr. Balderas remains hopeful that there will be further review by federal authorities of behavioral health services in New Mexico.

In conclusion, Mr. Balderas stated that greater oversight is needed for behavioral health issues in New Mexico, because fragile, at-risk populations suffer the direct impacts of deficiencies in the system. He said he recently wrote to New Mexico's congressional delegation regarding these matters, and he urged subcommittee members to do the same.

Questions/Concerns

A subcommittee member asked Mr. Balderas for a breakdown of federal and state funds used in the HSD's transition to Arizona providers. Mr. Balderas said he did not have this information with him today, but he promised to provide it to subcommittee members. In a welcome development, Mr. Balderas noted, the HSD has chosen the same firm (CLA) for its 2014 audit.

In response to members' concerns about how determinations of fraud are made, Mr. Balderas said there is a great national debate under way about what constitutes Medicaid fraud. The threshold for "allegations" of fraud has been lowered with the federal Patient Protection and Affordable Care Act, and there is considerable confusion and no clear path forward; it is a very difficult way to conduct business when questions about costs can shut a business down. Another member stated that experienced staff is being let go by the new agencies right now, and the member wondered what recourse there might be for consumers. There has been a stunning lack of consequences for the HSD, noted one member; another member commented on the apparent absence of HSD staff at this meeting.

Mr. Balderas emphasized that the state auditor has no authority to sanction a department, only to form an opinion. Corrective action is in the hands of management and the executive, he said, and he urged legislators to continue close oversight. He also urged the passing of an "obstruction of audit" law in New Mexico to ensure public access to information. After subcommittee members thanked Mr. Balderas and his staff for their extensive work, he remarked that PCG was paid more for one project than the state auditor's entire annual budget.

Consequences of Substance Abuse in Rio Arriba County and New Mexico

Michael Landen, M.D., state epidemiologist, Department of Health (DOH), told subcommittee members that he has good news and bad news in the fight against substance abuse in New Mexico. The bad news (see handout): today, and historically, New Mexico has the greatest burden of substance abuse of any state in the country. The death rate from alcohol is more than twice that for drug overdose and continues to rise. The good news is that New Mexico, which is second to West Virginia in drug overdose deaths, has reduced the drug overdose rate by 17 percent over the past two years, due largely to reductions in opioid prescribing. Prescription drug deaths are highest in Rio Arriba County, followed by Mora County.

With alcohol, Dr. Landen said, New Mexico is in a class by itself. The state leads the nation in deaths due to alcohol, but this is a problem that is within the state's power to control, he said. Excessive alcohol use is a public health issue, and Dr. Landen recommends the reduction of alcohol consumption, particularly in high-risk areas, by promoting evidence-based prevention strategies. Such efforts would include increased screenings and interventions and increased local control over alcohol outlet density. Dr. Landen also urged the legislature to look at increased alcohol taxation as an effective way to reduce consumption.

Dr. Landen made recommendations for addressing New Mexico's drug overdose rate as well; he suggests upgrading mandatory prescription monitoring program use by health care providers through licensing boards; enhancing feedback on dangerous prescribing to practitioners and their licensing boards; and assuring that naloxone is available to all at high risk of drug overdose. Dr. Landen also urged that New Mexico assess and address significant gaps in the drug and alcohol treatment infrastructure statewide.

Questions/Concerns

Several subcommittee members asked whether there is a hotline available to report overprescribing by practitioners. Dr. Landen said there is not a hotline, but such public concerns should be reported to the appropriate state licensing board. Another member suggested a public awareness campaign regarding such reporting. Many members also expressed concern about drug disposal, since there apparently is only one incinerator in the state. Because law enforcement is involved in disposing of controlled substances, and a new incinerator must meet federal standards, it is very complicated, Dr. Landen said. The easy availability of leftover medications is a major concern, he agreed.

A member moved to recommend to the LHHS the endorsement of legislation for a local option liquor excise tax, already passed by the senate. The motion was seconded and approved.

University of New Mexico (UNM) Pain Center

The UNM Pain Center is New Mexico's only adult and pediatric interdisciplinary pain management clinic (see handout), providing more than 6,000 patient visits per year, according to Brian Starr, M.D., medical director. Dr. Starr and Daniel Duhigg, D.O., psychiatrist and director of the center's addiction/mental health services, described the focus of the center, which accepts referrals from primary care providers throughout the state regardless of patient ability to pay. The UNM Pain Center educates New Mexico clinicians on screening for addictions, on opioid prescribing and on treating pain in patients who have co-occurring psychiatric illness. The average wait time for an appointment at the center is four to six months. Pain is a public health crisis, Dr. Starr asserted, affecting an estimated 100 million adults in the United States and costing upwards of \$365 billion annually in medical treatment and lost productivity (see handout). Education is the key to this issue, he believes, and the center is spearheading that effort in New Mexico.

The UNM Pain Center began a trial in July, in collaboration with the DOH, offering naloxone with every opioid prescription for chronic pain, the first such trial in the country. Naloxone is a drug that has been proven effective in countering opioid overdose, Dr. Starr said, and this trial will study its benefits as a risk-reduction measure addressing New Mexico's high rate of accidental opioid overdose deaths. The UNM Pain Center also collaborates with other key stakeholders, including the Indian Health Service, the U.S. Department of Veterans Affairs and the state boards of nursing, dentistry and pharmacy. While the center employs seven physicians, all are part time and total just 1.3 full-time-equivalents, which is very limiting to the delivery of services, he said, and more funding is needed to move forward. A draft of a senate bill making an appropriation of \$1.1 million (see handout) to the UNM Pain Center was discussed.

Panel Discussion: Rio Arriba County School-Based Behavioral Health Issues

Alice Meador, Ph.D., a psychologist with the Española Public School District, provides psychological services for special education students with emotional or behavioral health problems that affect learning. Many of these students have grown up seeing drug addiction and incarceration of family and relatives, Dr. Meador said, and they have huge mental health issues.

Intervention too often happens at a point of crisis, but what these students really need goes beyond symptom management. They need wraparound services, prevention programs, case management and outreach, and programs to help with learning behavioral competence. The special education program only serves students who meet specific eligibility requirements, Dr. Meador said, but there are many other students with needs who do not qualify.

Lloyd Vigil, Ph.D., also a psychologist with the Española Public School District, said that 97 percent of the boys he works with are fatherless. There are advantages to community-based programs, Dr. Vigil said, but the interruption of services that occurred in the transition to new agencies, and the loss of a therapist, is very upsetting to this group of students who, after so many other losses, lack trust. There are four or five homeless students in the district, Dr. Vigil said, and they are monitored by the school; some have graduated with honors.

Christina Baca, director of special education in the Española Public School District, said that families had to reapply to Medicaid with the changeover to Centennial Care and that many parents did not return to the new agencies for behavioral health services. The school district has not yet been able to develop a strong collaborative relationship with the new agencies, panel members agreed, and individual services have been reduced from four hours per day to one hour. Ambros Barros, who works for the district as a parent liaison, was involved previously with a program assisting students coming out of incarceration with their transition back into school. The program focused on prevention for drugs, alcohol and guns, and it was very helpful, he said, but was not continued by the new agency. The disconnect in behavioral health services was very disruptive, Mr. Barros agreed.

Questions/Concerns

Subcommittee members questioned panel members about other disruptions in behavioral and mental health services. Ms. Baca stated that previous agencies had more psychiatrists available to monitor medications, had a higher level of services and had the ability to take clinical services into the home. The district has lost a point person from the agencies to be on site in the schools, she said, and this needs to be restored. Despite challenges, Ms. Baca praised high school programs and the dedication of staff, teachers and students. All students with disabilities have graduated, she said. What is still needed is wraparound services, social workers in the schools and clinical side services that can work with families. This is the piece that the new agencies should be able to provide.

Also included on a district "wish list" would be a treatment center for students with emotional problems/psychotic episodes, early intervention for students with behavioral problems but who are not in special education and services for students with autism, Dr. Vigil added. The schools are eager to collaborate with community partners, and with the justice division, but adequate clinical support is essential.

An unresolved issue is who pays for behavior management services in the schools. Although the transition to the Arizona agencies took place a year ago, panel members were

unaware whether any of the four Medicaid managed care organizations have authorized any of these services. A subcommittee member asked LCS staff to draft a letter to the CMS to determine why this apparently is not being covered.

Rio Arriba County's Pathways and Treatment Model and the State of Behavioral Health in Rio Arriba County

Lauren M. Reichelt, director of the Rio Arriba Health and Human Services Department (RAHHS), provided an overview of the integrated service delivery system that has been built for county residents (see handout). The RAHHS is co-located with the Española Public Health Office and El Centro Family Health primary care clinic in the Rio Arriba Health Commons Clinic, a state-of-the-art facility in Española. Co-location facilitates the integration of primary care and behavioral health services, improves referral processes and builds relationships among providers, Ms. Reichelt said.

El Centro Family Health provides a wide array of health clinics and services for treatment and prevention, all on a sliding-fee scale. The RAHHS provides intensive case management for a variety of specialized populations, including substance abusers, high-risk women who are pregnant, jailed and released inmates, frequent emergency room (ER) users and seniors. A mobile van serves remote communities, often collaborating with other providers for immunizations, medication reconciliation, food distribution, job fairs, health screenings and other services.

The RAHHS is part of a nationwide pilot of the "pathways" model of care coordination, the success of which is judged by specific client health outcomes, Ms. Reichelt said. She described the success of the department's pathways program for pregnant substance abusers, which was touted by the federal Agency for Healthcare Research and Quality in its innovations exchange newsletter (see handout). Other pathways projects were described by David Trujillo, assistant county manager, Rio Arriba County, and include an ER diversion program, which has reduced overall use by 21 percent; a program of vouchers in an affordable housing pathway for homeless persons; and a new pathways program for jail diversion, helping people to get out of jail and keeping them out. Being able to track these individuals in a continuity of care model, including families and children, really does make a difference, Mr. Trujillo asserted.

Ms. Reichelt provided members with copies of an RAHHS presentation, "Steps to a Safer Future for Our Youth" (see handout), which is a detailed response to the June death of an emotionally distressed teenager, Victor Villalpando, shot dead by Española police after the youth, who was holding a cap gun, made multiple calls on himself to 911. Victor, 16, was a gymnast and dancer, was a recent graduate of Moving Arts Española and had been accepted into the New Mexico School for the Arts (see an editorial by Representative Rodella in the handouts). He was born with drugs in his system and had struggled to overcome many challenges in school. Victor was a respected peer mentor and was well-known in the community. The RAHHS presentation on youth safety points to three recent policy changes that impacted the deadly outcome of Victor's confrontation with police: 1) a disintegration of behavioral health services for youth; 2) the elimination of funding for crisis intervention training for law enforcement personnel; and 3) the

proliferation of guns in the community. Subcommittee members were informed of New Mexico's mental health crisis telephone hotline (855-662-7474), staffed 24 hours a day, seven days a week by professional counselors, but it has not been widely publicized, Ms. Reichelt said. Had he known, Victor might have called this number instead of the police. The RAHHS, in collaboration with the Rio Arriba Community Health Council, intends to convene a series of task forces to address these issues, Ms. Reichelt said, as well as the distressingly low profile of the new behavioral health providers in the community.

Questions/Concerns

Responding to a member's question about loss of funding since the County Indigent Hospital Claims Fund tax percentages were changed during the last legislative session, Ms. Reichelt said a number of county programs have been adversely affected, including flights for life, babies born in jail, DWI prevention and inmate health care. A \$100,000 appropriation to Rio Arriba County for substance abuse treatment and case management was passed by both houses in the last session, but "Rio Arriba" was line-item vetoed by the governor. A member asked that a letter be sent to the HSD to see if these funds are still available to Rio Arriba County. Another member reminded the subcommittee that a bill about medical care for New Mexico inmates will be discussed at the upcoming joint meeting of the LHHS and the Courts, Corrections and Justice Committee in Albuquerque. Bernalillo County is spending 40 percent of its budget on health care for inmates, the chair pointed out, most of whom are incarcerated because of substance abuse, mental illness or learning disabilities. As a matter of public policy, Ms. Reichelt said, this is atrocious. Ms. Baca concluded the panel discussion with a heartfelt affirmation of Española, saying that the community does not deserve its negative reputation and assuring members that it is a wonderful place to live.

Behavioral Health and Substance Abuse Impact on Public Safety and Law Enforcement in Northern New Mexico

Major Ken Johnson, Santa Fe County Sheriff's Office, said there has been an increase in incidents over the past year dealing with persons with mental issues, especially in the northern parts of the county. This is due to a lack of services, he said, many of which have been recently cut. He was accompanied at the presentation table by Lieutenant Gabe Gonzales, who works as an investigator with the Santa Fe County Sheriff's Office. Both officers expressed frustration with the revolving-door aspect of incarceration and hospitalization for mentally ill persons. They were asked by a member if the sheriff's office had been contacted by either of the two new behavioral health providers in northern New Mexico; they said, to their knowledge, that they had not. Chief Richard Gallegos of the Española Police Department said that he had contact with one of the agencies when several of his officers sought counseling after the Villalpando incident. Police officers are sending people to the hospitals in Española and Santa Fe because many resources are not available or have been cut, Chief Gallegos said.

Public Comment

Mark Johnson, chief executive officer of ESEM, one of the 15 behavioral health agencies accused of fraud by the HSD, spoke to subcommittee members about the devastation of being

forced to turn over a 35-year-old business and lay off 120 employees (see handout) who were serving more than 250 children in northern New Mexico. Mr. Johnson's handout detailed the chronology of the HSD's actions against his organization and the attorney general's determination in January 2014 that there was not sufficient evidence of fraud against ESEM. Nonetheless, in July, the HSD re-referred the organization to the Attorney General's Office. Mr. Johnson thanked subcommittee members for their passion and dedication.

Anna Otero Hatanaka, executive director of the Association of Developmental Disabilities Community Providers, said her organization is in solidarity with ESEM. The developmental disabilities provider network members she represents live in fear of the same thing happening to them, she said, and the re-referral of ESEM made her very angry.

Mary Schumaker, foster mother of Victor Villalpando, asked members to look at police training as a mental health issue. It has been 45 days since her son's death, and she said she is still reeling. She then read a poem she wrote about the health of her community.

Satguru Khalsa commented that police dispatchers should have sensitivity training and should have phone numbers for mental health providers. Police officers should be screened for mental health issues, and the treatment system should utilize trauma-informed care.

Roger Montoya, who was an instructor of Victor Villalpando, said that he hopes this tragedy will result in a better community. He and his collaborators are prepared to do it right, he said, but they cannot do it alone.

Valerie Romero thanked subcommittee members for restoring her faith in the system. Ms. Romero said she came here to represent the kids who will be traumatized by changes in treatment. This system has a lot of gaps, she said. Ms. Romero detailed her own troubled past and her successful efforts to overcome it. Today is Ms. Romero's thirty-first birthday, she said, and now she has taken back control of her life.

Adjournment

There being no further business, the meeting adjourned at 4:15 p.m.